

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

February 9, 2007

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: Issuance of Revocable Permit No. FW-2007-01 to Palani Ranch Company, Inc., Kailua-Kona, North Kona, Hawaii, TMK (3)-7-4-002:007 and (3)-7-4-001:por. 003.

Background: At its May 26, 2006 meeting (Item D-2), the Board of Land and Natural Resources (BLNR) amended terms of its previous action of March 14, 1997, detailing proposed additions of public lands to Honuaula Forest Reserve, North Kona, Hawaii. The BLNR also authorized the Division of Forestry and Wildlife (DOFAW) to employ livestock grazing for the purposes of wildfire prevention on public lands comprising TMK (3)-7-4-002:007 and (3)-7-4-001:por. 003. The proposed land set-asides were formally added to Honuaula Forest Reserve through Governor's Executive Order No. 4,166 on July 20, 2006.

Palani Ranch Company, Inc. (PRC) seeks continued grazing access to the subject lands pursuant to the terms outlined in the May 26, 2006 BLNR action. This Revocable Permit results from that interest and subsequent negotiations between PRC and DOFAW for utilization of the following paddocks for pasture proposes: Honuaula 1, Kealakehe 1, Kealakehe 2 and Kealakehe 3 paddocks (Exhibit A). These paddocks comprise approximately 1,500 acres of public lands within Honuaula Forest Reserve, TMK (3)-7-4-002:007 and (3)-7-4-001:por. 003 at Kealakehe and Honuaula, North Kona, Hawaii.

The attached permit (Exhibit B) is issued pursuant to Sections 171-13 and -55, Hawaii Revised Statutes, as amended, for pasture purposes only. The subject lands are currently grazed by PRC under the Land Division's Revocable Permit No. S-6971, which will be cancelled as of February 28, 2007, and replaced by the subject Permit.

This Revocable Permit shall be valid from March 1, 2007 to February 28, 2008, and subject to annual review by the Board. Annual rent in the sum of FOUR THOUSAND TWENTY DOLLARS AND NO/CENTS (\$4,020.00) shall be payable semi-annually in advance.

Upon execution of this Permit, PRC shall deposit with DOFAW SIX HUNDRED SEVENTY DOLLARS AND NO/CENTS (\$670.00) as security for the faithful performance of the permit terms and conditions.

Discussion: The Division believes that issuance of this new revocable permit will accomplish several goals. The subject lands were only recently added to the Forest Reserve System, and DOFAW will not initiate active resource management on all the newly added lands immediately. DOFAW seeks a phased approach to removal of cattle, controlling buildup of fine wildfire fuels and securing new land management budgeting while simultaneously offering PRC an opportunity to wind down it's historic grazing operations on these lands and obtain reasonable time to find alternative pasture areas.

RECOMMENDATION:

1. Authorize the issuance of a revocable permit to Palani Ranch Company, Inc., covering the subject area for pasture purposes under the terms and conditions cited in the attached permit, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

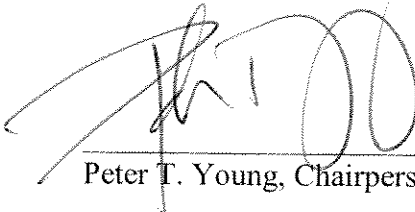
Respectfully submitted,



PAUL J. CONRY, Administrator

Attachments (Exhibits A & B)

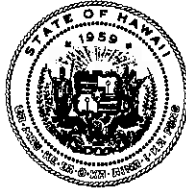
APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson



LINDA LINGLE
GOVERNOR OF HAWAII



PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813
TEL (808) 587-0166 FAX (808) 587-0160

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REVOCABLE PERMIT FOREST RESERVE SYSTEM

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET # 325, HONOLULU, HI 96813

Revocable Permit No. FW-2007-01

EFFECTIVE: March 1, 2007

EXPIRATION: February 28, 2008

RESERVE: Portion of Honuaula Forest Reserve, North Kona, Hawaii

TO: Mr. James S. Greenwell
Palani Ranch Company, Inc.
2828 Paa Street, Suite 3150
Honolulu, HI 96819
Tel. (808) 732-2622
Fax. (808) 732-2788

At its May 26, 2006 meeting (Item D-2), the Board of Land and Natural Resources (BLNR) amended terms of its previous action of March 14, 1997, detailing proposed additions of public lands to Honuaula Forest Reserve, North Kona, Hawaii. The BLNR also authorized the Division of Forestry and Wildlife (DOFAW) to employ livestock grazing for the purposes of wildfire prevention on public lands comprising TMK (3)-7-4-002:007 and (3)-7-4-001:por. 003. The proposed land set-asides were formally added to Honuaula Forest Reserve through Governor's Executive Order No. 4,166 on July 20, 2006.

Palani Ranch Company, Inc. (PRC) seeks continued grazing access to the subject lands pursuant to the terms outlined in the May 26, 2006 BLNR action. This Revocable Permit results from that interest and subsequent negotiations between PRC and DOFAW for utilization of the following paddocks for pasture proposes: Honuaula 1, Kealakehe 1, Kealakehe 2 and Kealakehe 3 paddocks (Exhibit A).

Pursuant to the authority granted by the Board of Land and Natural Resources at its February 23, 2007 meeting and to section 171-55, Hawaii Revised Statutes (HRS), PRC is hereby granted a

Revocable Permit to enter and occupy, on a month-to-month basis TMK (3)-7-4-002:007 and (3)-7-4-001:por. 003 consisting of approximately 1,500.00 acres in the area shown on the attached map labeled "Exhibit A" (the "Property").

**THIS REVOCABLE PERMIT IS GRANTED SUBJECT TO
THE FOLLOWING TERMS AND CONDITIONS**

SPECIAL CONDITIONS:

1. DOFAW shall build new fences on the boundary between Kealakehe 1 and Keahuolu paddocks, and the boundary between Honuaula Tract II and the lands of Puaa by April 30, 2008. The quality and specifications of the new fences shall substantially conform to the fence recently constructed by PRC along the north boundary of Kealakehe 1 Paddock that is along the PRC/State boundary.
2. PRC shall maintain perimeter fencing for all paddocks rented under this permit in stock-proof condition at it's own expense, regardless of whether or not PRC has an interest or ownership in adjoining lands, throughout the term of this Permit except for repairs required due to trees growing on DOFAW land that fall on or damage the boundary fence, said repairs being the responsibility of DOFAW.
3. PRC may trap and remove escaped cattle in Honuaula 2 and Sheep Station paddocks through April 30, 2007. PRC shall not be charged rent on this land parcel as the intended use is only for the removal of escaped cattle. Pursuant to Title 12, Chapter 183-19, HRS, and after providing due public notice as required, DOFAW may initiate cattle control efforts in:
 - a. Honuaula 2 and Sheep Station paddocks on May 1, 2007 or thereafter.
 - b. Honuaula 1 and Kealakehe 1 paddocks on the later of (a) May 1, 2008 or (b) the completion by DOFAW of the new Kealakehe 1/Keahuolu fenceline referred to in #1 above.
 - c. Kealakehe 2 and Kalalakehe 3 paddocks on May 1, 2016 or thereafter.

Cattle control in Honuaula Forest Reserve will be limited to aerial and ground hunts by DOFAW staff. DOFAW will refrain from such control efforts in specific paddocks in accordance with the minimum time frames detailed above or longer at DOFAW's option.

4. So long as PRC remains a Permittee of DOFAW with respect to Kealakehe 2 and Kealakehe 3 Paddocks and subject to the conditions below, PRC shall grant DOFAW access to (a) Honuaula Tract II (Sheep Station and Honuaula 1 paddocks) from Kaloko Drive via PRC's fee lands of Honokohau. PRC will grant such access subject to reasonable rules and conditions as it has in the past. Such access is specifically for the purpose of conducting official DOFAW business and activities and not for recreational use or hunting or any other purpose.

GENERAL CONDITIONS:

1. PRC is authorized to occupy and use the land units comprising paddocks Honuaula 1, Kealakehe 1, Kealakehe 2 and Kealakehe 3 (Exhibit A) for pasture purposes only.
2. PRC shall pay, at the DOFAW office, P.O. Box 4849, Hilo, Hawaii 96720, annual rent in the sum of FOUR THOUSAND TWENTY DOLLARS AND NO/CENTS (\$4,020.00) payable semi-annually in advance.
3. Upon execution of this Permit, PRC shall deposit with DOFAW SIX HUNDRED SEVENTY DOLLARS AND NO/CENTS (\$670.00) as security for the faithful performance of all of these terms and conditions. The deposit will be returned to PRC upon termination or revocation of this Permit, if and only if all of the terms and conditions of this Permit have been observed and performed to the satisfaction of an authorized representative of DOFAW. Otherwise, the deposit may, at the option of an authorized representative of the DOFAW be applied toward payment of any amounts owed hereunder, without waiving any of the Board's other rights hereunder.
4. PRC, at its own cost and expense, shall keep the government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties, and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and shall be filed with the Board. In the event of loss, damage, or destruction of those improvements, the Board shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to PRC.
5. PRC shall give DOFAW twenty-five (25) calendar days notice in writing before vacating the premises if vacating prior to the end of the Revocable Permit.
6. PRC shall pay all real property taxes assessed against the Premises from the commencement date of this Permit.
7. PRC shall at its own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at any future time during the term of this Permit applicable to the Premises, and, indemnify the State of Hawaii against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules and regulations or of this covenant.
8. PRC shall repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. PRC shall obtain the prior written consent of DOFAW before making any improvements or changes of use.

10. PRC shall keep the Premises and improvements in a clean, sanitary, and orderly condition.
11. PRC shall pay all charges, assessments, or payments for water, other utilities, and the collection of garbage as may be levied, charged, or be payable with respect to the Premises.
12. PRC shall not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.
13. PRC shall at all times with respect to the Premises, use due care for public safety.
14. PRC shall procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Permit, commercial general liability insurance, in an amount acceptable to the Department (\$1,000,000 per incident/\$2,000,000 aggregate) with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire Premises, including all grounds and all roadways or sidewalks on or adjacent to the Premises in the use or control of PRC.

Prior to entry and use of the premises or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire Permit term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or non-renewed until after sixty (60) days written notice has been given to the State.

The State shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the State, the insurance provisions in this Permit do not provide adequate protection for the State, the State may require PRC to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The State's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The State shall notify PRC in writing of changes in the insurance requirements and PRC shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the State incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit PRC's liability under this Permit nor to release or relieve PRC of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, PRC shall be obligated for the full and total amount of any damage, injury, or loss caused by PRC's negligence or neglect connected with this Permit. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by PRC's policy.

The insurance certificate(s) shall be mailed to:

Forestry Program Manager
Department of Land and Natural Resources
Division of Forestry and Wildlife
1151 Punchbowl St., Room 325
Honolulu, Hawaii 96813

16. PRC shall indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of PRC or PRC's employees, agents, or officers under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve PRC of the obligations described herein.
17. PRC shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges.
18. This Permit is issued and effective on a month-to-month basis. The Permit shall automatically terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. PRC agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as PRC continues to hold a permit for the Premises or continues to occupy or use the Premises.
19. The Board may revoke this Permit for any reason whatsoever, upon written notice to PRC at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to PRC at least five (5) calendar days prior to the revocation.
20. If PRC fails to vacate the Premises upon revocation or termination of the Permit, PRC shall be liable for and shall pay the previously applicable monthly rent, computed and prorated on a daily basis, for each day PRC remains in possession.
21. If PRC fails to vacate the Premises upon revocation or termination of the Permit, the Board, by its agents, or representatives, may enter upon the Premises, without notice, and at PRC's cost and expense remove and dispose of all vehicles, equipment, materials, or any personal property remaining on the Premises, and PRC agrees to pay for all costs and expenses of removal, disposition, or storage.

22. The Board may at any time increase or decrease the monthly rental by written notice at least thirty (30) business days prior to the date of change of rent. Upon such notice, PRC shall deposit with the Board any additional monies required to maintain an amount equal to two times the new monthly rental as security for the faithful performance of all of these terms and conditions.
23. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by PRC shall remain the property of PRC and PRC shall have the right, prior to the termination or revocation of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event PRC shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period the Board in its discretion may allow, the Board may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
24. The Board reserves the right for its agents or representatives to enter or cross any portion of the Premises at any time.
25. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
26. PRC has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.
27. The acceptance of rent by the Board shall not be deemed a waiver of any breach by PRC of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.
28. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.
29. Any and all disputes or questions arising under this Permit shall be referred to the Chairperson of the Board and his determination of these disputes or questions shall be final and binding on the parties.
30. PRC shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. PRC shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of PRC's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's

consent, which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by PRC, then PRC shall be responsible for the costs thereof. In addition, PRC shall execute affidavits, representations and the like from time to time at the Board's request concerning PRC's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by PRC.

PRC agrees to indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the use or release of hazardous materials on the premises occurring while PRC is in possession, or elsewhere if caused by PRC or persons acting under PRC. These covenants shall survive the expiration, revocation, or termination of the permit.

For the purpose of this permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

31. Prior to termination or revocation of the subject permit, DOFAW may require PRC to conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent termination or revocation of the Permit. The Board, at its sole option, may refuse to approve termination or revocation unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if PRC does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by PRC.
32. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Premises, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.
33. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to PRC shall be delivered or addressed to the address stated above. Notice to State of Hawaii shall be delivered or addressed to the DOFAW Administrator 1151 Punchbowl Street, Room 325, Honolulu, Hawaii 96813. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party

may by notice to the other specify a different address for notice purposes, provided that PRC's mailing address shall at all times be the same for both billing and notice. In the event there are multiple PRC's hereunder, notice to one PRC shall be deemed notice to all PRC's.

34. Unless the text indicates otherwise, the use of any gender shall include all genders and, if PRC includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.
35. PRC shall be responsible for cleaning the area to its original condition by removing all trash and debris upon completion or cancellation of the Permit.
36. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, PRC and its consultants, contractors and/or persons acting for or on its behalf in the exercise of this Permit shall stop all activity and contact the State Historic Preservation Division in Kapolei at (808) 692-8015 immediately.
37. The premises, or any portion thereof, shall not be utilized for residential purpose. The construction or placement of any structure on the premises for residential purposes is strictly prohibited.
38. The premises, or any portion thereof, shall not be utilized for the boarding of horses.
39. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this Permit is in force.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

By _____
Chairperson of the Board of
Land and Natural Resources

Approved by the Board of
Land and Natural Resources
at its meeting held on _____

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

ACCEPTED:

Palani Ranch Company, Inc.

By Its: _____
Date: _____, 2007

STATE OF HAWAII)
) SS.
COUNTY OF)

On this _____ day of _____, 20____, before me personally appeared _____ and _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

My commission expires: _____

cc: Land Board Member
OCCL
Mr. Roger Imoto, DOFAW
Mr. Michael Constantinides, DOFAW